

AUG 02 2007

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Application No.: 10/699,469

Inventor(s): Focht, et al.

Filed: October 31, 2003

Docket No.: 9081M

Confirmation No.: 2774

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AUG 02 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/699,469
Applicant(s) : Heather Lynn Focht et al.
Filed : 10/31/2003
Title : Striped Liquid Personal Cleansing Compositions
Containing A Cleansing Phase and A Separate Benefit
Phase With Improved Stability
TC/A.U. : 1751
Examiner : Necholus Ogden, Jr.
Conf. No. : 2774
Docket No. : 9081M
Customer No. : 27752

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Advisory Action mailed on January 19, 2007. This brief is also in response to the Notice of Non-Compliant Appeal Brief dated July 3, 2007.

This Brief was previously submitted in a timely manner on March 22, 2007 and a Notice of Appeal was filed on January 23, 2007.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

The rejection to Claims 1-2, 4-6, 8-12, 14-17, 19-20, 23-25, 27-31, 33-36, 38-39 and 41-54 has been withdrawn. The Appellants assume these claims are allowed. Claims 3, 21, 22 and 40 were canceled. Claims 7, 13, 18, 26, 32 and 37 are rejected.

Claims 7, 13, 18, 26, 32 and 37 are appealed. A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

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STATUS OF AMENDMENTS

Amendments to claims 1-2 and the addition of claims 22-40 were filed on Sept. 28, 2004. These amendments were entered.

Amendments to claims 1-20 and 22-39 and the cancellation of claims 21 and 40 were filed on Sept. 19, 2005. These amendments were entered.

Amendments to claims 1, 2, 4, 5, 11, 23, 24 and 30, the cancellation claims 3 and 22 and the addition of claims 41-54 were filed on Feb. 2, 2006. These amendments were entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention, as recited in Claim 1, relates to a personal cleansing article that comprises a package containing a striped personal cleansing composition (page 3, lines 16-18; page 21, lines 16-20, page 26, lines 1-4, page 27, lines 9-12 and page 28, lines 7-10). The striped personal cleansing composition comprises a first stripe comprising a cleansing phase comprising a surfactant and water; (page 2, line 24-25) and at least one additional stripe comprising a benefit phase comprising at least about 20%, by weight of said benefit phase, of a hydrophobic skin benefit agent having a Vaughan Solubility Parameter of from about 5 to about 15 (cal/cm³)^{0.5} (page 13, line 4 to page 17, line 2), and a density modifier comprising a low density microsphere (page 8, line 26 to page 9 line 27 and from page 20, line 30 to page 21, line 6). The cleansing phase and the benefit phase have substantially the same density (page 29, line 8). The striped personal care composition is in a form selected from the group consisting of liquid, semi-liquid, cream, lotion, gel, and mixtures thereof (page 5, lines 2-5). The cleansing phase and said benefit phase are in physical contact within said package (page 1, lines 12-14 and page 2, lines 9-16).

The present invention, as recited in Claim 2, relates to a personal cleansing article that comprises a package containing a striped personal cleansing composition (page 3, lines 16-18; page 21, lines 16-20, page 26, lines 1-4, page 27, lines 9-12 and page 28, lines 7-10). The striped personal cleansing composition comprises a first stripe comprising a cleansing phase (page 2, line 24-25) comprising from about 1% to about 50%, by weight of the cleansing phase (page 2, lines 21-23, page 5, line 21-25) of a surfactant selected from the group consisting of anionic surfactant, non-ionic surfactant, zwitterionic surfactant, cationic surfactant, soap, and mixtures thereof (page 2, lines 32-35). The cleansing phase is non-Newtonian shear thinning (page 11, lines 5-7), has a viscosity of equal to or greater than about 3,000 centipoise and a yield point of at least about 0.1 Pascal (page 3, lines 1-2 page 29, lines 15-16). The striped personal cleansing composition comprises at least one additional stripe comprising a separate benefit phase

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comprising from about 20% to about 100%, by weight of the benefit phase, of a hydrophobic skin benefit agent (page 3, lines 3-4) selected from the group consisting of hydrocarbons, oils, waxes, silicones, fatty acid derivatives, cholesterol, cholesterol derivatives, diglycerides, triglycerides, vegetable oils, vegetable oil derivatives, acetoglyceride esters, alkyl esters, alkenyl esters, lanolin, lanolin derivatives, wax esters, beeswax derivatives, sterols, phospholipids, and mixtures thereof (page 15, lines 14-18; page 29, lines 19-23) wherein the hydrophobic benefit agent has a Vaughan Solubility Parameter of from about 5 to about 15 (cal/cm³)^{0.5}; (page 13, line 4 to page 17, line 2). The striped personal cleansing composition comprises a density modifier comprising a low density microsphere (page 8, line 26 to page 9, line 27 and from page 20, line 30 to page 21, line 6). The cleansing phase and the benefit phase have substantially the same density (page 29, line 8) wherein the ratio between the cleansing phase and the benefit phase is from about 1:9 to about 99:1 (page 3, line 8-9; page 29, lines 27-28). The cleansing phase and said benefit phase are in physical contact within said package (page 1, lines 12-14 and page 2, lines 9-16). The cleansing phase and benefit phase are present as stripes wherein the stripe size is at least about 0.1 mm in width and at least about 1 mm in length (page 3, lines 11-13; page 4, lines 23-24 and page 29, lines 31-32). The striped personal care composition is in a form selected from the group consisting of liquid, semi-liquid, cream, lotion, gel, and mixtures thereof (page 5, lines 2-5).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Do Claims 7, 13, 18, 26, 32, and 37 comply with the written description requirement under 35 USC §112, first paragraph?

ARGUMENTS

Claims 7, 13, 18, 26, 32, and 37 comply with the written description requirement under 35 USC §112, first paragraph

The Advisory Action states that Claims 7, 13, 18, 26, 32, and 37 remain rejected under 35 USC §112, first paragraph because the Appellant did not have support in the originally filed application for the subject matter as required for the written description paragraphs. The Advisory Action states that although Appellant does have support for the subject matter in the provisional application, it does not satisfy the requirements of under 35 USC §112, first paragraph. The Advisory Action states the subject matter must be in the original filed specification.

The Appellants respectfully traverse the rejection.

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The Examiner states that Claims 7 and 26, which recite "substantially free of surfactant," are not supported by the Appellant's disclosure. Appellants respectfully submit that the terminology "substantially free of surfactant" is found in original claim 7 filed in the U.S. non-provisional application 10/699,469 filed October 31, 2003. Moreover, "substantially free of" is defined on page 4, line 18-20 in the U.S. non-provisional application 10/699,469 filed October 31, 2003. The Examples on pages 23, line 26 to page 28, line 10 describe benefit phase formulae that are substantially free of surfactant. Further, the Appellants respectfully submit that the terminology "substantially free of surfactant" is found in original claim 5 filed in the U.S. provisional application 60/423,537 filed November 4, 2002. Moreover, "substantially free of" is defined on page 4, line 18-20 in the U.S. provisional application 60/423,537 filed November 4, 2002. The present application claims benefit to U.S. provisional application 60/423,537 filed November 4, 2002. Therefore, the Appellants believe that there is sufficient disclosure for Claims 7 and 26 of the present invention to satisfy the written description requirement.

The Office Action states that Claims 13 and 32, which recite the range "3 to 60%" by weight of the cleansing phase, are not supported by the Appellant's disclosure. The Appellants respectfully submit that the range "3 to 60%" is found in original claim 13 filed in the U.S. non-provisional application 10/699,469 filed October 31, 2003. Further, the Appellants respectfully submit that the range "3 to 60%" is found in original claim 12 filed in the U.S. provisional application 60/423,537 filed November 4, 2002. The present application claims benefit to U.S. provisional application 60/423,537 filed November 4, 2002. The Appellants respectfully argue that the originally filed claims form part of the specification of the patent application therefore, the written description requirement is satisfied. Thus, the Appellants believe that there is sufficient disclosure for Claims 13 and 32 of the present invention to satisfy the written description requirement.

The Office Action states that Claims 18 and 37, which recite the component "cationic polymer," are not supported by the Appellant's disclosure. The Appellants respectfully submit that the component "cationic deposition polymer" is found in original claim 18 filed in the U.S. non-provisional application 10/699,469 filed October 31, 2003, as well as, page 11, lines 1-3 and U.S. Patent No. 5,011,681, to Ciotti et al., issued April 30, 1991 that is incorporated by reference. The Examples on pages 23, line 26 to page 28, line 10 describe formulae with cationic deposition polymer, such as, guar. Further, the Appellants respectfully submit that the component "cationic deposition polymer" is found in original claim 15 filed in the U.S. provisional application 60/423,537 filed November 4, 2002. The present application claims

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benefit to U.S. provisional application 60/423,537 filed November 4, 2002. Therefore, the Appellants believe that there is sufficient disclosure for Claims 18 and 37 of the present invention to satisfy the written description requirement.

SUMMARY

The Appellants respectfully request that the rejections of record be withdrawn.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

Bridget Murray
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Date: March 22, 2007
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CLAIMS APPENDIX

7. A personal cleansing article according to claim 1, wherein the benefit phase is substantially free of surfactant.
13. A personal cleansing article according to claim 12, wherein the cleansing phase comprises from about 3% to about 60%, by weight of said cleansing phase, of total active surfactant.
18. A personal cleansing article according to claim 1, wherein said personal cleansing composition further comprises a cationic deposition polymer.
26. A personal cleansing article according to claim 2, wherein the benefit phase is substantially free of surfactant.
32. A personal cleansing article according to claim 31, wherein the cleansing phase comprises from about 3% to about 60%, by weight of said cleansing phase, of total active surfactant.
37. A personal cleansing article according to claim 2, wherein said personal cleansing composition further comprises a cationic deposition polymer.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None